Supreme Court of the United States

GEORGE H. BEAZELL,
Plaintiff in Error,

No. 848 *vs*

STATE OF OHIO and WILLIAM H. CHATFIELD, JR.,
Defendants in Error.

Supplemental Brief of Plaintiff in Error in Opposition To Motion to Affirm and Dismiss.

On August 12, 1925, during the absence of all counsel for plaintiff in error, a notice was served by counsel for defendant in error that a motion to dismiss the writ of error or affirm the judgment of the Supreme Court of Ohio would be presented by counsel on behalf of the State of Ohio on the 5th day of October, 1925.

Counsel for plaintiff in error supplementing the original brief heretofore filed herein respectfully submit:

FIRST: No sufficient legal reason has been assigned by defendant in error in the motion to dismiss

or affirm nor in the brief filed in support thereof, for a dismissal of the proceedings in error or the affirmance of the judgment of the Supreme Court of Ohio, why this case should not be heard orally and in full on its merits. Neither the Court of Appeals of Hamilton County, Ohio, nor the Supreme Court was unanimous in affirming the judgment of the trial court.

SECOND: None of the authorities cited by defendant in error, all of which are cited and considered or quoted from the brief of plaintiff in error, support the contention of the defendant in error, but on the contrary support each and all of the contentions advanced by plaintiff in error, *viz.*, that this plaintiff in error has been deprived of substantial rights by the trial court and reviewing courts of Ohio in refusing this plaintiff in error a separate trial.

THIRD: That the motion to dismiss and affirm, and the defendant's brief in error in support thereof, fail to establish that the right of defendant in error to a separate trial, was not a vested right under Section 13677 of the General Code of Ohio as provided therein at the time of the commission of the alleged criminal act.

FOURTH: Counsel for defendant in error fail to establish by their motion or brief in support thereof, that Section 13677 as enacted and amended after the commission of the alleged criminal act, was not an *ex post facto* law in its operation and effect in this case, in that it took away and deprived this plaintiff in error of a substantial and vested right, in "altering the situation of the accused party to his dis-

advantage" (*ex parte Medley*, 134 U. S., 160).

FIFTH: Neither by the authorities cited for the State of Ohio nor by any line of reasoning that they have submitted to your Honors, do they combat or meet the authorities cited in our brief that the conduct of the Court in depriving Beazell of the substantial right of a separate trial by jury is violative of Sec. 10, Article 1, of the Constitution of the United States.

SIXTH: This is the primary case on a statute of this character and the accused should be given full time to have his cause presented by an oral argument.

This memorandum is submitted, together with the brief which has been heretofore filed in this case on behalf of George H. Beazell, in opposition to the motion to affirm and dismiss.

Very respectfully,

PROVINCE M. POGUE,
HARRY M. HOFFHEIMER,
THOMAS L. POGUE,
Attorneys for George H. Beazell.

Cincinnati, Ohio, Sept. 15th, 1925.